

IN THE DISTRICT COURT FOR TULSA COUNTY
STATE OF OKLAHOMA

DISTRICT COURT
FILED

OCT 14 2014

(1) MICHAEL BINGAMAN,

Plaintiff,

vs.

(7) SPIRIT AEROSYSTEMS, INC.,
a foreign for profit business corporation,

Defendant.

SALLY HOWE SMITH, COURT CLERK
STATE OF OKLA. TULSA COUNTY

CJ-2014-03902
CASE NO. **E. Mark Barcus**

ATTORNEY LIEN CLAIMED

PETITION

COMES NOW the Plaintiff, Michael Bingaman, by and through his attorneys of record, Daniel E. Smolen and Lauren G. Lambright, of *Smolen, Smolen & Roytman, PLLC*, and brings this action against Defendant, Spirit Aerosystems, Inc., for violations of his constitutionally protected rights arising out of his employment and termination by said Defendant.

PARTIES, JURISDICTION AND VENUE

1. Plaintiff is a resident of Tulsa County, State of Oklahoma.
2. Defendant Spirit Aerosystems, Inc., is a foreign for profit business corporation regularly conducting business in Tulsa County, State of Oklahoma and employs more than fifteen (15) people.
3. The incidents and occurrences which form the basis of Plaintiff's action occurred in Tulsa County, State of Oklahoma.
4. Plaintiff filed a Charge of Discrimination with the Equal Employment Opportunity Commission ("EEOC") complaining of discrimination based on age and retaliation. A Notice of Right to Sue was received by Plaintiff and this Petition has been

EXHIBIT "2"

filed within ninety (90) days of the receipt of the Notice. As such, all conditions precedent to the filing of this lawsuit have been fulfilled.

5. This Court has jurisdiction and venue is proper in Tulsa County, State of Oklahoma.

6. Plaintiff brings this action for damages under the ADEA, providing for relief against discrimination in employment on the basis of age as well as retaliation.

7. Compensatory damages are sought pursuant to 42 U.S.C. § 2000e, *et seq.* and 29 U.S.C. § 216(b).

8. Costs and attorney's fees may be awarded pursuant to 42 U.S.C. § 2000e, *et seq.*

FACTS COMMON TO ALL CLAIMS

9. Plaintiff incorporates as if realleged the preceding paragraphs.

10. Plaintiff was hired by Defendant in January 2005 as a first level manager. He received positive performance reviews throughout his employment with Defendant and was never formally disciplined until his termination. The Plaintiff is over 55 years old.

11. Toward the end of July 2012, the Plaintiff was assigned a new second level manager, Butch Morris. Mr. Morris constantly nit picked the Plaintiff, criticized his performance and treated Plaintiff's younger coworkers better.

12. The Plaintiff was then required to train a substantially younger employee who was twenty-three years old, who then replaced the Plaintiff after he was terminated from his employment. Within approximately one month of Mr. Morris becoming Plaintiff's supervisor, the Plaintiff's employment was terminated on August 21, 2012 with no prior written discipline and without the opportunity to be placed on a performance

improvement plans. The Plaintiff witnessed other substantially younger coworkers allowed to transfer in lieu of termination.

13. The Plaintiff also requested to be moved to the day shift but despite his seniority, was not permitted to move while his younger coworkers were given these more desirable work hours.

14. The Plaintiff also believes his termination was in retaliation for complaints about age discrimination. Shortly before his termination, the Plaintiff complained to Debra Mitchell in Human Resources. He was told after he made his complaint that he had a “target on his back.”

15. Plaintiff believes that he was treated differently and terminated based upon his age and retaliated against for complaining about age discrimination.

FIRST CLAIM FOR RELIEF:

Disparate Treatment on the Basis of Age in Violation of the Age Discrimination in Employment Act of 1967 as amended, 29 U.S.C. 621 *et seq.* (the “ADEA”)

16. The preceding paragraphs are incorporated herein by reference.

17. The foregoing conduct violates the Age Discrimination in Employment Act of 1967 as amended, 29 U.S.C. 621 *et seq.*

18. Defendant has a historical pattern and practice of age discrimination.

19. Plaintiff experienced disparate treatment compared to co-workers under the age of forty (40) with regard to job assignments, training, discipline, benefits and termination in violation of the ADEA.

20. Defendant's discriminatory practices have resulted in the loss of past and future wages and other job benefits, and have caused Plaintiff to suffer humiliation, embarrassment, and emotional distress.

21. Defendant committed the acts alleged with malice or reckless indifference to the protected rights of Plaintiff. Plaintiff is thus entitled to recover punitive damages in an amount to be determined according to proof.

22. Upon information and belief, Plaintiff's termination were motivated in substantial part by his age, in violation of the ADEA.

WHEREFORE, Plaintiff prays for judgment against Defendant for:

- a. Back pay and lost benefits; front pay until normal retirement
- b. Compensatory damages for his mental anguish, pain and suffering and other non-pecuniary losses;
- c. Punitive damages for the intentional and knowing acts of discrimination committed by Defendant's management and executives;
- d. His attorney fees and the costs and expenses of this action;
- e. Injunctive Relief
- f. Such other relief as the Court deems just and equitable.

SECOND CLAIM FOR RELIEF
RETALIATION IN VIOLATION OF THE ADEA

23. Plaintiff incorporates the preceding paragraphs as if realleged.

24. By terminating Plaintiff's employment for engaging in the protected activity of complaining about age discrimination, the Defendant has violated the ADEA, 29 U.S.C. § 623(d).

WHEREFORE, Plaintiff prays for judgment against the Defendant for:

- a. Back pay and lost benefits; front pay until normal retirement
- b. Compensatory damages for his mental anguish, pain and suffering and other non-pecuniary losses;
- c. Punitive damages for the intentional and knowing acts of discrimination

- committed by Defendant's management and executives;
- d. His attorney fees and the costs and expenses of this action;
- e. Such other relief as the Court deems just and equitable.

THIRD CLAIM FOR RELIEF
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

25. Plaintiff incorporates the preceding paragraphs as if realleged.
26. The Defendant's actions of intentional and malicious discrimination are extreme and outrageous and have caused severe emotional and psychological damage to the Plaintiff.
27. The Defendant intentionally or recklessly caused severe emotional distress to the Plaintiff beyond which a reasonable person could be expected to endure.

WHEREFORE, Plaintiff prays for judgment against Defendant for:

- a. Back pay and lost benefits; front pay until normal retirement
- b. Compensatory damages for his mental anguish, pain and suffering and other non-pecuniary losses;
- c. Punitive damages for the intentional and knowing acts of discrimination committed by the Defendant's management;
- d. His attorney fees and the costs and expenses of this action;
- e. Such other relief as the Court deems just and equitable.

WHEREFORE, based on the foregoing, Plaintiff prays that this Court grant him the relief sought including, but not limited to, actual damages in excess of Seventy-Five Thousand Dollars (\$75,000), with interest accruing from date of filing of suit, punitive damages in excess of Seventy-Five Thousand Dollars (\$75,000), back pay and lost benefits, compensatory damages for mental anguish, pain and suffering and other non-pecuniary loss, reasonable attorneys fees, injunctive relief, and all other relief deemed appropriate by this Court.

Respectfully submitted,

SMOLEN, SMOLEN & ROYTMAN PLLC

A handwritten signature in black ink, appearing to be 'DS' or 'D.E. Smolen', written over a horizontal line.

Daniel E. Smolen (OBA#19943)
Lauren G. Lambright, (OBA#22300)
701 South Cincinnati Avenue
Tulsa, OK 74119
(918) 585-2667
(918) 585-2669 (Fax)
Attorneys for Plaintiff

IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA

MICHAEL C. BINGAMAN

Plaintiff,

vs.

SPIRIT AEROSYSTEMS, INC.,
a for profit business corporation,

Defendant.

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CJ-2014-03902
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ORIGINAL SUMMONS

SERVE BY U.S. CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Spirit Aerosystems, Inc.
c/o Corporation Service Company
115 SW 89th Street
Oklahoma City, OK 73139

To the above-named Defendant(s)

You have been sued by the above named plaintiff(s), and you are directed to file a written answer to the attached petition and order in the court at the above address within twenty-one (21) days after service of this summons upon you exclusive of the day of service. Within the same time, a copy of your answer must be delivered or mailed to the attorney for the plaintiff. Unless you answer the petition within the time stated judgment will be rendered against you with costs of the action.

Issued this 14th day of Oct., 2014
SALLY HOWE SMITH, COURT CLERK
County Court Clerk

By

Carol A. Denney
Deputy Court Clerk

(Seal)

This summons and order was served on

(Signature of person serving summons)

YOU MAY SEEK THE ADVICE OF AN ATTORNEY ON ANY MATTER
CONNECTED WITH THIS SUIT OR YOUR ANSWER. SUCH ATTORNEY SHOULD BE
CONSULTED IMMEDIATELY SO THAT AN ANSWER MAY BE FILED WITHIN THE
TIME LIMIT STATED IN THIS SUMMONS.

Return ORIGINAL for filing
PERSONAL SERVICE

2014-03902

I certify that I received the foregoing Summons the _____ day of _____, 2014, and that I delivered a copy of said Summons with a copy of the Petition to the following named defendant personally in _____ County, _____ at the address and on the date set forth opposite each name, to-wit:

Name of Defendant

Address

Date of Service

USUAL PLACE OF RESIDENCE

I certify that I received the foregoing Summons on the _____ day of _____, 2014, and that on _____, I served _____ by leaving a copy of said summons with a copy of the attached Petition at _____, which is his/her dwelling house or usual place of abode, with _____, a person then residing therein, who is fifteen (15) years of age or older.

NOT FOUND

Received this Summons this _____ day of _____, 2014. I certify that the following persons of the defendant within named not found in said County:

FEES

Fee for service \$ _____, Mileage \$ _____,

Total \$ _____

Dated this _____ day of _____, 2014.

By:

Sheriff of _____ County,

AFFIDAVIT

I, _____, the undersigned, under oath, do say that I served this Summons and made the return thereon, according to law that I am duly authorized to make this affidavit so help me God.

Sheriff of _____ County,

Subscribed to and sworn to before me this _____ day of _____, 2014.

My Commission Expires: _____

Seal

Notary Public

CERTIFICATE OF SERVICE BY MAIL

I certify that I mailed copies of the foregoing summons with a copy of the Petition to the following named defendant at the address shown by certified mail, addressee only, return receipt requested, on the _____ day of _____, 2014, and receipt thereof on the dates shown:

Defendant

Address Where Served

Date

Received

Signature of person mailing summons

From: sop@cscinfo.com [mailto:sop@cscinfo.com]
Sent: Wednesday, October 22, 2014 5:10 PM
To: Thomas, Deidra K
Subject: Notice of Service of Process - Transmittal Number: 13086261

Corporation Service Company ®

NOTICE OF SERVICE OF PROCESS

Transmittal Number: [13086261](#)

(Click the Transmittal Number to view your SOP)

For more information on instant access to your SOP, click [Sign Me Up](#).

Pursuant to client instructions, we are forwarding this summary and Notice of Service of Process.

Entity:	Spirit AeroSystems, Inc.
Entity I.D. Number:	2330281
Entity Served:	Spirit Aerosystems, Inc.
Title of Action:	Michael Bingaman vs. Spirit Aerosystems, Inc.
Document(s) type:	Summons/Complaint
Nature of Action:	Discrimination
Court/Agency:	Tulsa County District Court, Oklahoma
Case/Reference No:	CJ-2014-03902
Jurisdiction Served:	Oklahoma
Date Served on CSC:	10/22/2014
Answer or Appearance Due:	21 Days
Originally Served On:	CSC
How Served:	Certified Mail

Sender Information:

Daniel E. Smolen
918-585-2667

Primary Contact:

Deidra Thomas
Spirit AeroSystems, Inc.

Copy of transmittal only provided to:

Ruth Smith

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the document(s) and taking appropriate action.

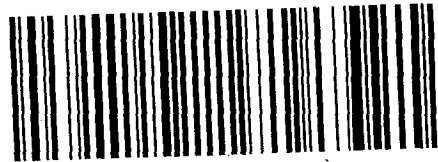
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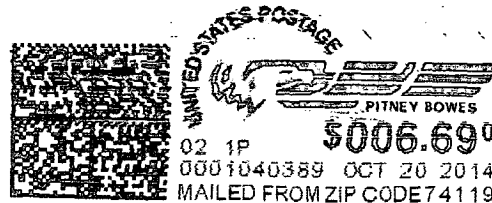
2711 Centerville Road | Wilmington, DE 19808
(888) 690-2882 | sop@cscinfo.com

Smolen | Smolen | Roytman ^{PLLC}
ATTORNEYS AT LAW

701 S. Cincinnati Ave. Tulsa, OK 74119
www.ssrok.com



7012 2920 0002 3932 6394



Spirit Aerosystems, Inc.
c/o Corporation Service Company
115 SW 89th Street
Oklahoma City, OK 73139

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